

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs October 13, 2004

**STATE OF TENNESSEE v. LEWIS M. DAVIDSON, III**

**Appeal from the Criminal Court for Davidson County**  
**No. 2001-D-1959     Cheryl Blackburn, Judge**

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**No. M2003-02829-CCA-R3-CD - Filed December 6, 2004**

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The defendant, Lewis M. Davidson, III, was convicted of first degree premeditated murder and sentenced to life imprisonment. See Tenn. Code Ann. §§ 39-13-202(a)(1), -208(c). In this appeal, he asserts that the evidence is insufficient to support his conviction. The judgment of the trial court is affirmed.

**Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed**

GARY R. WADE, P.J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

John E. Rodgers, Nashville, Tennessee, for the appellant, Lewis M. Davidson, III.

Paul G. Summers, Attorney General & Reporter; Richard H. Dunavant, Assistant Attorney General; and Roger Moore and Shellie Neal, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

On July 28, 2001, the victim, Willie Houston, and his girlfriend, Nedra Jones, joined their friends, Valerie and Melvin Holt, for a river cruise on the General Jackson Showboat in Nashville. While waiting in the parking lot for the Holts, Ms. Jones and the victim consumed some alcoholic beverages. According to Ms. Jones, she did not drink any alcohol after boarding the boat but the defendant may have had a beer after doing so. The boat departed at midnight on July 29 and began docking at 2:45 a.m. Because of concern for Mr. Holt, who is blind, they had decided to wait until most of the passengers had disembarked before leaving the boat. As they were preparing to leave, Ms. Jones asked the victim to hold her purse and then went into the restroom. When Ms. Jones returned, Ms. Holt informed her that the victim had helped Mr. Holt to the restroom. When the victim and Mr. Holt returned, the victim was carrying Ms. Jones' purse on his shoulder and they were laughing about something that had happened in the restroom. Shortly thereafter, the defendant and another man stepped out of the restroom and cursed the victim. According to Ms. Jones, she scolded

the defendant, telling him that he did not "have to talk to [the victim] like that," to which the defendant responded, "F--- you, fat bitch." At that point, Ms. Jones then called the defendant a "fat mother f-----" and the victim warned him not to "disrespect" Ms. Jones. When the defendant continued to use abusive language as they left the boat, the victim directed Ms. Jones to stop so that the defendant and his companion could pass. The defendant then remarked, "I'll f--- ya'll up, you and your friends."

At trial, Ms. Jones testified that as she and the victim walked with the Holts to the parking lot, the defendant shouted at them again before walking to his car. According to Ms. Jones, the defendant approached the victim as he was unlocking his car and pointed a gun. Ms. Jones recalled shouting for the security guards as the victim tried to calm the defendant, saying, "Man, there ain't no need in acting like this. We just came on the boat to have a good time, and . . . we are just ready to go home." Ms. Jones testified that when the victim pushed the gun down, stepped back, and put his hands up with the palms facing in an outward direction, the defendant shot him in the chest, got into a waiting car, and left the scene. Ms. Jones testified that the victim never touched the defendant and remained calm throughout the incident. After the defendant left, Ms. Jones realized that the victim had been shot. Unable to get the license tag number because the vehicle was driven away so quickly, Ms. Jones later identified the defendant from a photographic lineup. She had also seen the parking lot security video taken during the commission of the offense. Ms. Jones provided assurances that the victim remained calm throughout the incident and never placed his hands on the defendant.

Officer Johnny Lawrence, a crime scene officer with the Metropolitan Police Department, discovered a nine millimeter shell casing where the victim was shot. Officers also discovered a projectile nearby. There was no evidence that the bullet matched the shell casing.

Valerie Holt corroborated the testimony of Ms. Jones. She testified that as they were leaving the boat, they were approached from behind by two "nasty and belligerent" men who cursed at them. She recalled that the victim asked the men to be "cool" and that one of the men called Ms. Jones "a fat B" and threatened to kill them. Ms. Holt confirmed that the victim did not threaten the defendant or raise his voice. She testified that she was only 15 to 20 feet away from the victim at the time that he was shot.

Melvin Holt testified that the victim agreed to help him to the restroom before leaving the boat. He recalled that when a man asked the victim if he was gay, the victim explained that his "honey" was in the restroom and he was merely holding her purse. Mr. Holt testified that he heard the same man make similar comments to the victim in the parking lot fifteen minutes later. He confirmed that the victim tried to calm the man, who responded with obscene language and threats. According to Mr. Holt, "it got quiet for a second, and then the next thing that I heard, my wife and Nedra was hollering for Security, saying the man had a gun, . . . and . . . I heard a gunshot."

Detective Brad Corcoran, of the Homicide Division obtained a photograph of the defendant from the ship's photographer and submitted it to the news media. Although the authorities received

several tips as to the defendant's whereabouts, he was not found until his arrest in Ohio some two months after the shooting.

Dr. John Gerber, who performed the autopsy, testified that the victim died as the result of a single gunshot wound to the chest. According to Dr. Gerber, the bullet entered the front of the victim's chest twelve inches below the shoulder and exited through his back twenty inches below the shoulder. The bullet lacerated the liver, the interior vena cava, and the portal vein. It was Dr. Gerber's opinion that the bullet was fired from a distance greater than two feet. Testing established that the victim had a blood alcohol level of .092% at the time of his death.

The defendant, testifying on his own behalf, denied having an exchange of words with the victim in the restroom aboard the General Jackson. He claimed he first saw the victim on the way to the parking lot when Ms. Jones accused him of some kind of altercation with the victim. He admitted that he exchanged words with Ms. Jones, calling her a derogatory name, and claimed that, in response, the victim threatened to kill him. The defendant testified that the argument extended into the parking lot and contended that the victim advanced toward him in a threatening way. The defendant contended that as he was trying to leave, he and the victim "got into a scuffle and the next thing I knew, the gun went off and he was standing there looking at me." The defendant acknowledged removing his gun from the car before he was approached by the victim. He also claimed that his companion was shot. While admitting that he did not see the victim in possession of a weapon, the defendant expressed fear of the victim, who, he said, was much taller than him.

The defendant asserted that he first realized his companion, Reginald Goodner, had been shot when they got into the car. According to the defendant, Goodner was driving the car and instead of going to a hospital for treatment, he dropped the defendant off at a friend's house. The defendant acknowledged that he had seen his picture on television and knew that he was wanted by the police. He testified that he left Nashville approximately one week after the offense and traveled to Cincinnati, Ohio. The defendant claimed that he sold the murder weapon to "some guy" on the street. He maintained that he threw away the clothes and hat that he was wearing on the night of the shooting.

The defendant challenges the sufficiency of the evidence, arguing that the state failed to prove that he acted with premeditation. On appeal, of course, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. Liakas v. State, 199 Tenn. 298, 286 S.W.2d 856, 859 (1956). Because a verdict

of guilt removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992).

First degree murder is "[a] premeditated and intentional killing of another." Tenn. Code Ann. § 39-13-202(a)(1) (Supp. 2001). Tennessee Code Annotated section 39-13-202 provides that:

As used in subdivision (a)(1) "premeditation" is an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

Tenn. Code Ann. § 39-13-202(d) (Supp. 2001). Whether the evidence is sufficient depends entirely on whether the state was able to establish beyond a reasonable doubt the element of premeditation. See State v. Sims, 45 S.W.3d 1, 7 (Tenn. 2001); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999). Proof of deliberation is no longer required. See Tenn. Code Ann. § 39-13-202(a)(1) (Supp. 2001); Miller v. State, 54 S.W.3d 743, 746 n. 5 (Tenn. 2001).

Our supreme court has held that the presence of premeditation is a question for the jury and may be inferred from the manner and circumstances of the killing. See State v. Suttles, 30 S.W.3d 252, 261 (Tenn. 2000); State v. Pike, 978 S.W.2d 904, 914 (Tenn. 1998). Moreover, it is well established that premeditation may be proved by circumstantial evidence. See, e.g., State v. Brown, 836 S.W.2d 530, 541 (Tenn. 1992). Our high court has identified a number of circumstances from which the jury may infer premeditation: (1) the use of a deadly weapon upon an unarmed victim; (2) the particular cruelty of the killing; (3) the defendant's threats or declarations of intent to kill; (4) the defendant's procurement of a weapon; (5) any preparations to conceal the crime undertaken before the crime is committed; (6) destruction or secretion of evidence of the killing; and (7) a defendant's calmness immediately after the killing. See Pike, 978 S.W.2d at 914-15; State v. Bland, 958 S.W.2d 651, 660 (Tenn. 1997). This list, however, is not exhaustive and serves only to demonstrate that premeditation may be established by any evidence from which the jury may infer that the killing was done "after the exercise of reflection and judgment." Tenn. Code Ann. § 39-13-202(d); see Pike, 978 S.W.2d at 914-15; Bland, 958 S.W.2d at 660.

One treatise provides that premeditation may be inferred from events that occur before and at the time of the killing:

Three categories of evidence are important for [the] purpose [of inferring premeditation]: (1) facts about how and what the defendant did prior to the actual killing which show he was engaged in activity directed toward the killing, that is, planning activity; (2) facts about the defendant's prior relationship and conduct with

the victim from which motive may be inferred; and (3) facts about the nature of the killing from which it may be inferred that the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a preconceived design.

2 Wayne R. LaFave, Substantive Criminal Law § 14.7(a) (2d ed. 2003) (BBR 5.2).

Here, the proof, viewed in the light most favorable to the state, established that the defendant first confronted the victim in the restroom of the General Jackson, cursed at the victim and Ms. Jones, and then threatened to kill them. Ms. Holt described the defendant as "nasty and belligerent" as they walked to the parking lot. Each witness also testified that the victim did nothing to provoke the attack and instead had tried to calm the defendant. There was proof that the defendant walked to his car, armed himself with a nine millimeter handgun, and approached the victim from behind. The state established that the victim was standing with his hands raised when he was shot. After shooting the victim, the defendant fled the scene, evaded arrest, and eventually traveled to Ohio, where he was found two months later. The defendant admitted disposing of the murder weapon and the clothes he was wearing at the time of the offense. Because the defendant claimed that he shot the victim in self-defense, the trial court provided appropriate jury instructions.

As was their prerogative, the jury accredited the testimony of the state's witnesses and rejected the defendant's claim that he killed the victim in self-defense. See State v. Goode, 956 S.W.2d 521, 527 (Tenn. Crim. App. 1997) ("It is well settled that whether an individual acted in self-defense is a factual determination to be made by the jury as the sole trier of fact."). That the defendant took time to walk to his car and procure a weapon shortly after the argument had apparently ended is evidence of premeditation. That he shot the unarmed victim, destroyed evidence of the crime, and fled the jurisdiction supports the theory of the state. See Pike, 978 S.W.2d at 914-15; Bland, 958 S.W.2d at 660. In our view, the evidence was sufficient to support the conviction.

Accordingly, the judgment of the trial court is affirmed.

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GARY R. WADE, PRESIDING JUDGE